

² Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In light of the Board's disposition of this case, oral argument is denied.

20 C.F.R. § 10.528 if a completed form was not received by OWCP within 30 days. OWCP mailed the letter to appellant's last known address of record. No response was received.

On July 1, 2019 OWCP received its June 10, 2019 letter, returned by the U.S. Postal Service as undeliverable and unable to forward.

By decision dated August 8, 2019, OWCP suspended appellant's wage-loss compensation, effective August 18, 2019, for failing to submit the EN1032 form as requested. It advised that, if she completed and returned an enclosed copy of the EN1032 form, it would restore her wage-loss compensation retroactive to the date of suspension.

Section 8106(b) of FECA authorizes the Secretary of Labor to require a partially disabled employee to report his or her earnings from employment or self-employment, by affidavit or otherwise, in the manner and at the times the Secretary specifies.³

Under section 10.528 of OWCP's implementing federal regulations, an employee in receipt of compensation benefits must complete an affidavit as to any work or activity indicating an ability to work which the employee has performed for the prior 15 months.⁴ If an employee who is required to file such a report fails to do so within 30 days of the date of the request, his or her right to compensation for wage loss is suspended until OWCP receives the requested report. At that time, OWCP will reinstate compensation retroactive to the date of suspension if the employee remains entitled to compensation.⁵

The mailbox rule provides that proper and timely mailing of a document in the ordinary course of business raises a rebuttable presumption of receipt by the addressee.⁶ As a rebuttable presumption, receipt will not be presumed, however, when there is evidence of nondelivery, and the presumption may also be rebutted by other evidence that supports that the addressee did not receive the correspondence.⁷

The record in this case contains direct evidence of nondelivery of the June 10, 2019 letter and accompanying EN1032 form. Although properly addressed to appellant at her address of record, the U.S. Postal Service returned the letter to OWCP as undeliverable and unable to forward.

³ 5 U.S.C. § 8106(b).

⁴ 20 C.F.R. § 10.528. *See also* *R.B.*, Docket No. 20-0176 (issued June 25, 2020); *A.H.*, Docket No. 15-0241 (issued April 3, 2015).

⁵ *Id.* *See also* *J.M.*, Docket No. 20-1310 (issued April 21, 2021); *P.M.*, Docket No. 16-0382 (issued May 19, 2016).

⁶ *S.B.*, Docket No. 19-0337 (issued February 19, 2020); *L.C.*, Docket No. 19-0320 (issued July 26, 2019); *C.Y.*, Docket No. 18-0263 (issued September 14, 2018); *Kenneth E. Harris*, 54 ECAB 502, 505 (2003).

⁷ *Id.*

OWCP received the returned envelope on July 1, 2019. Consequently, appellant has rebutted the presumption of receipt of the June 10, 2019 letter and EN1032 form under the mailbox rule.⁸

As appellant did not receive the June 10, 2019 letter, the Board finds that OWCP improperly issued its suspension decision.⁹ Accordingly,

IT IS HEREBY ORDERED THAT the August 8, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: December 14, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

⁸ See *M.U.*, Docket No. 09-0526 (issued September 14, 2009) (the Board found that presumption of receipt of a notice of an oral hearing was rebutted when the envelope enclosing the notice of an oral hearing was returned and marked return to sender and remanded the case for reissuance of the notice of an oral hearing).

⁹ *V.R.*, Docket No. 18-1117 (issued June 20, 2019).